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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **BAIL APPLN. 334/2025, CRL.M.A. 2463/2025**

SUDDHI

.....Petitioner

Through: Mr. Nischal Kr. Neeraj,
Mr. Deependra Kumar Pathak and
Mr. Praveen Kr. Mishra, Advocates.

versus

STATE OF GOVT. OF NCT OF DELHI

.....Respondent

Through: Mr. Amit Ahlawat, APP for State
with Mr. Bintu Sharma, SI, Spl. Cell.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

18.03.2025

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1. The present application under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023¹ (earlier Section 439 of the Code of Criminal Procedure, 1973²) seeks regular bail in proceedings arising from FIR No. 266/2023 under Sections 20 and 25 of Narcotics Drugs and Psychotropic Substances Act, 1985³ registered at P.S. Special Cell, Delhi.

2. Briefly stated, the case of the prosecution is as follows:

2.1 On 19th October, 2023, ASI Shailesh Kumar received secret information about an Inter-State Drug Syndicate run operated by two persons, namely - Umesh Yadav and Sahil Thapa, whereby they smuggle the narcotic substance – Charas (Hashish) from Nepal and further transport it to

¹ “BNSS”

² “Cr.P.C.”

³ “NDPS Act”



major cities, including Delhi and the National Capital Region. The secret informer further told the ASI that one person, namely Suddhi (Applicant herein), a member of this drug syndicate, will arrive in Delhi on the same day – i.e., 19th October, 2023, carrying a huge consignment of Charas in a Swift Car and he will come to the Paper Market, Gazipur, Delhi between 1:00 PM to 1:30 PM, to deliver the consignment to another member of the syndicate. The informer asserted that if the raid is conducted at the right time, a huge quantity of narcotics can be recovered from his possession.

2.2 After following the procedure, concerned DCP authorised the ASI to take appropriate action and accordingly a raiding team was constituted and dispatched to the spot.

2.3 During the raid near the Paper market, Gazipur, Delhi, at about 1:15 PM, the Applicant – Suddhi was apprehended from the spot along with a Maruti Swift car. Subsequently, he was apprised of the secret information received *qua* him, as well as his legal rights under Section 50 of the NDPS Act. In this regard, a written notice was also served upon him, however, he did not exercise his right to be searched before the nearest Magistrate/ Gazetted Officer or to conduct a search of the members of the raiding team and their vehicle. Thus, upon his refusal to exercise these rights, his physical search was conducted, however, nothing incriminating was recovered therefrom.

2.4 During the search of the vehicle – i.e., Maruti Swift car, *prima facie* nothing incriminating was recovered, however, on sustained interrogation, the Applicant disclosed that he had made multiple secret cavities in his car to hide the narcotic substance, for safe transportation from one place to another without being apprehended by law enforcement authorities.



Therefore, on his instance, the concealed cavities of the car were examined. From one such cavity, 15 sealed transparent polythenes packets were recovered and from the other, 17 such sealed packets were recovered. Upon inspection, the packets were found to contain the narcotic substance – Charas and the total weight of the recovered packets was found to be 32.230 Kgs. Pursuant to such recovery, the FIR no. 266/2023 under Sections 20 and 25 of NDPS Act was registered at P.S. Special Cell.

2.5 Thereafter, a police custody remand of the Applicant was obtained from the concerned Court and he was interrogated. During investigation, the Applicant disclosed that he along with another driver named Chandu, who is another member of the drug syndicate, came to Delhi in a Renault Duster car approximately 30 days ago, under the directions of Umesh Yadev, Sahil and Sajid. He disclosed that he delivered approximately 50 Kgs of Charas to a person named Khali Daa, in a location near the Deer Park, Safdarjung, Delhi and that he can identify Khali Daa, in case action is taken to recover the said contraband Charas from him.

2.6 Subsequently, after obtaining the requisite authorization from the competent authority, a raid was conducted in Arjun Nagar, Safdarjung Enclave, Delhi. On the instance of the Applicant, one Pahalman Budha Magar @ Pahalman @Khali Da, having the domicile of Nepal was apprehended. On the instance of Pahalman @ Khali Da, two peach-coloured suitcases were recovered which were marked as A and C and upon inspection, the suitcases were found to contain 29.055 Kgs of Charas. Furthermore, from his bed-room, a total of INR 1,68,000/- in proceeds from the illegal sale of Charas was also recovered along with packing material and electronic weighing machine.



2.7 In his disclosure statement, Pahalman @ Khali Da, another co-accused Kailye Bahadur Argeja @ Dhan Bhadur was apprehended and 1.438 Kgs of Charas was recovered from his bag.

2.8 During investigation, the samples of the recovered contraband were taken before the Magistrate and the same were sent for forensic analysis, which confirmed that the recovered substance was Charas. Furthermore, the Maruti Swift car seized from the spot, which was being driven by the Applicant is registered under his name.

2.9 After completion of investigation, a chargesheet has been filed and charges under Section 20(c), 25 and 29 of the NDPS Act have been framed against the Applicant by the Trial Court.

2.10 The recovered narcotic substance from all of the accused persons is 62.723 Kgs of Charas, out of which, 32.230 Kgs of Charas was recovered from the possession of the Applicant. This is clearly beyond the commercial quantity and therefore the strict bar of Section 37 of the NDPS Act is attracted.

2.11 Moreover, the Applicant does not have any address in Delhi, therefore, if he is released on bail, he may evade the proceedings before the Trial Court.

3. Counsel for the Applicant seeks bail raising the following grounds:

3.1. The Applicant is only the driver of the seized Maruti Swift car, which was purchased by his employer. The Applicant did not buy the said car by himself, rather, his employer is the one who bought the car, but got it registered in the name of the Applicant. The Applicant only drives the said car on instructions of his employer for which he earns a salary of INR 15,000/- per month.



3.2 The prosecution has falsely implicated the Applicant in the present case by planting drugs in his car. The Applicant was not in conscious possession of the alleged narcotic substance found in the said car. There has been no recovery from the person of the Applicant. Moreover, there has been non-compliance of Section 42 and 50 of the NDPS Act in the present case.

3.3 Further, there is no money trail found *qua* the Applicant and therefore, there is a reasonable doubt in the case of the prosecution which entitles the Applicant to be enlarged on bail.

3.4 There was no attempt by the raiding team to enjoin independent public witnesses to verify the recovery, which was done in a public place near the Paper market, Gazipur, Delhi. Thus, there is no credibility in the case of the prosecution as it cannot be verified whether there actually was a recovery or whether the contraband was planted on the Applicant.

3.5 As per nominal roll, the Applicant has already been in custody as an under-trial for approximately 1 year and 4 months. In light of the fact that the investigation is complete and the chargesheet has been filed, the continued incarceration of the Applicant would serve no purpose.

3.6 Having regard to the legal principles concerning grant of bail and personal liberty, as well as considering that the Applicant is the sole earning member of his family, which comprises of his wife and three minor children, he should be released on bail. After Petitioner's arrest, his family is facing financial constraints and her children who are minor need financial health for their upbringing and education.

4. On the other hand, Mr. Amit Ahlawat, APP for the State, strongly opposes the present bail application on the following grounds:



4.1 The entire recovery proceedings have been videographed in the present case, which clearly shows that the recovery was affected from the car being driven by the Applicant, therefore, the contention that he has been implicated in a false case, is entirely baseless.

4.2 The said car from which the recovery was affected is registered in the name of the Applicant and was being driven by him when he was apprehended on the basis of secret information. Therefore, the Applicant was clearly in the conscious possession of the narcotic substances.

4.3 The recovery in the present case from the Applicant is of 32.230 Kgs of Charas which is 32 times beyond the prescribed commercial quantity of 1 Kg. Therefore, the Applicant is required to meet the stringent bail conditions under Section 37 of the NDPS Act.

5. The Court has considered the submissions urged by the Applicant but does not find merit in the same. Indeed, the recovery of the contraband in the present case, from the Applicant's possession is of 32.230 Kg, exceeds the statutory threshold of commercial quantity. As such, the stringent twin conditions of Section 37 of the NDPS Act are triggered and the Applicant bears the burden of demonstrating: (i) that there are reasonable grounds to believe that he is not guilty of the alleged offence, and (ii) that he is not likely to commit any offence if released on bail.

6. Even though the Applicant has argued that he was not in the conscious possession of the contraband, the fact that the vehicle from which the recovery was made is registered in the name of the Applicant, is admitted. The Applicant has argued that the said vehicle was only registered in his name on the instance of his employers, however, there is no such evidence to suggest the same. The Court also finds this to be a peculiar



submission since it is not clear as to why a person would purchase a car only to register it in the name of the chauffeur who is hired to only drive the car.

7. Further, it must be noted that in the present case the contraband was kept in a concealed manner in specially made cavities in the said car which clearly suggests that the Applicant, who was driving the car, had the knowledge and the intent to smuggle illegal contraband in the said car. The law on conscious possession has been unequivocally laid down in ***Mohan Lal v. State of Rajasthan***⁴, where the Supreme Court held that an accused cannot evade liability merely by denying physical possession if the surrounding circumstances establish his knowledge and control over the contraband. Thus, *prima facie*, it is established that the Applicant was in conscious possession of the contraband.

8. Another pertinent factor in the present case is that the entire recovery process has been videographed by the raiding team, which subsequently diminishes the allegation of the Applicant that he has been falsely implicated in the present case.

9. Moreover, although the investigation is complete and the chargesheet has been filed, however the period of incarceration is not exceptionally long for this Court to direct release of the Applicant, only on the invocation of Article 21 of the Constitution of India, particularly, when the facts of the case presented by the prosecution indicate the Applicant's active role in the trafficking of commercial quantities of contraband.

10. In light of these glaring facts and considering the manner in which commercial quantities of contraband was recovered in the present case, the Court finds no ground to enlarge the Applicant on bail.



11. Accordingly, the present petition is dismissed along with pending application(s).

SANJEEV NARULA, J

MARCH 18, 2025

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⁴ (2015) 6 SCC 222